IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)
	)
Shaun DENNIE	) Group Art Unit: 2186
	)
Application No.: 10/050,774	) Examiner: T. Thai
	)
Filed: January 18, 2002	) Confirmation No.: 9924
	)
For: PROTOCOL FOR	)
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Commissioner for Patents
P.O. Box 1450
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Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests a pre-appeal brief review of the Final Office Action dated

August 11, 2005. This Request is being filed concurrently with a Notice of Appeal.

I.   Requirements For Submitting a Pre-Appeal Brief Request for Review

Applicant has met each of the requirements for a pre-appeal brief review of

rejections set forth in an Office Action. The application has been at least twice rejected.

Applicant has filed a Notice of Appeal with this Request, and has not yet filed an Appeal

Brief. Lastly, Applicant submits a Pre-Appeal Brief Request for Review that is five (5) or

less pages in length and sets forth legal or factual deficiencies in the rejections. *See*

Official Gazette Notice, July 12, 2005. Therefore, Applicant requests review of the Examiner's rejections in the Final Office Action for the following reasons.

II. The Rejection of Claims 23-26 and 30-34 under 35 U.S.C. § 103(a) is Legally Deficient

a. The Examiner Did not Address Applicant's Arguments Pursuant to M.P.E.P. § 707.01(f)

Applicant specifically pointed out in the Responses to Office Action filed October 11, 2005 ("Response") that the Examiner did not address the arguments associated with claims 24-26 presented in the Response filed April 4, 2005. (Response at 8.) Applicant again presented arguments associated with these claims and requested a complete response from the Examiner. (The Request at 8-13.) In the Advisory Action, the Examiner selectively addressed arguments associated with claim 23. (Advisory Action at p. 2.) M.P.E.P. § 707.07(f) requires the Examiner to "take note of the applicant's argument and answer the substance of it" when Applicant traverses any rejection. The Examiner has not met this burden having twice failed to address the substance of Applicant's arguments presented in the April 4, 2005 and October 11, 2005 responses. Further, the Examiner has not established a *prima facie* case of obviousness having ignored the distinguishing aspects of the cited art pointed out by Applicant in these responses. (*See e.g.,* Response at 8-9.)

Further, the Examiner did not address Applicant's arguments associated with claims 30-34 presented in the Request. (Request at 9-13.) Instead, the Examiner only commented on claim 23 in the Advisory Action. Accordingly, there is a legal deficiency in the manner from which the Examiner rejected claims 24-26 and 30-34 under

35 U.S.C. § 103(a). As such, Applicant requests the rejection be withdrawn and the claims allowed.

b. The Examiner Did not Establish a Prima Facie Case of Obviousness

The Examiner's rejection of these claims under 35 U.S.C. § 103(a) is legally deficient at least because the cited art does not teach or suggest the recitations of claims 23-26 and 30-34 and the Examiner does not show a proper suggestion to combine the references as required under M.P.E.P. § 2143.

To establish a *prima facie* case of obviousness, the Examiner must show, among other things, the prior art reference or references, taken alone or combined, must teach or suggest each and every element recited in the claims. (*See* M.P.E.P. § 2143.03.) In rejecting claims 23-26 under 35 U.S.C. § 103(a), the Examiner asserts *Nikhil et al.* was "used to provide evidence of the well known concept of allowing a first thread to access a designated block of memory while another thread requests and secures access to another block through the implementation of pipelining operation." (Final OA at 16.) As noted by the Applicant, however, the pipelining features of *Nikhil et al.* are used to allow multiple operations to be processed without waiting for the completion of one operation to the next. Accordingly, one of ordinary skill in the art would find it counterproductive and non-motivating to implement an architecture that allows multiple operations to concurrently perform, as disclosed by *Nikhil et al.*, with the serial access control system disclosed by *Snider*. Indeed, *Snider* teaches away from having multiple processors access data structure 200 at the same time to ensure the "integrity of the data." (*Snider* at 7:3-5.) (Response at 7.) Further, *Snider* is directed towards a centralized memory access control mechanism, whereas *Nikhil et al.* uses distributed access control

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mechanisms via tokens. The Examiner points to no suggestion in the references that would have motivated one of ordinary skill in the art to look to *Nikhil et al.* to modify *Snider*, as they are directed towards different and incompatible mechanisms. *(Id.)*

Further, with regard to claims 30-34, the Examiner asserted that it would have been obvious to combine *Nikhil et al.* and *Resman et al.* "to allow for easy system configuration and quicker analysis." (Final OA at 7.) As noted in the Response, the requisite motivation for the asserted combination is lacking because, for example, the Examiner does not show that a skilled artisan considering *Resman et al.* and *Nikhil et al.*, and not having the benefit of Applicant's disclosure, would have been motivated to combine or modify the references in a manner resulting in the recitations of claims 30-34. (Response at 12-13.) Further, as explained by Applicant, the Examiner presented the same reasons for combining *Nikhil et al.* with *Resman et al.* as those set forth in the rejection of claim 23 in view of *Snider and Nikhil et al. (See Final Office Action*, p. 4, ll. 8-21 and p 6, l. 13 to p. 7, l. 10.) The Examiner's conclusion is not properly supported and does not show that a skilled artisan would have looked to an instruction level pipeline processing system, such as that taught by *Nikhil et al.,* for modifications to a memory allocation system within a printer processing system, such as that taught by *Resman et al.*

In light of the above arguments and those presented in the Response, Applicant submits that the Examiner failed to establish a *prima facie* case of obviousness in rejecting claims 23-26 and 30-34 under 35 U.S.C. § 103(a). Therefore, the rejections should be withdrawn and the claims allowed

III. Conclusion

Because the Examiner's rejections of claims 23-24 and 30-34 include legal and factual deficiencies with regard to 35 U.S.C. § 103(a) and the M.P.E.P., Applicant is entitled to a pre-appeal brief review of the Final Office Action. And based on the foregoing arguments, Applicant respectfully requests that the rejection of these claims be withdrawn and the claims allowed.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 10, 2005　　　　By:　　　　　　　　　　　　　　　
　　　　　　　　　　　　　　　　　　Joseph E. Palys
　　　　　　　　　　　　　　　　　　Reg. No. 46,508